



1997 SENATE BILL 186

April 30, 1997 - Introduced by Senators WINEKE, WELCH, RISSER, RUDE, MOORE, FITZGERALD, WIRCH, PLACHE, WEEDEN, ROESSLER, ZIEN and SCHULTZ, cosponsored by Representatives VRAKAS, FOTI, SYKORA, HANSON, KEDZIE, TRAVIS, FREESE, JENSEN, KAUFERT, OLSEN, PLALE, MEYER, HASENOHRL, KELSO, POWERS, ALBERS, HARSDORF, HUEBSCH, RILEY, RUTKOWSKI, HANDRICK, HOVEN, LAZICH, NASS, OTT, WARD, DUFF, PORTER, M. LEHMAN, HUTCHISON, DOBYNS, MUSSER, AINSWORTH, MURAT, HUBER and WALKER. Referred to Committee on Economic Development, Housing and Government Operations.

1 **AN ACT to create** 440.08 (2) (a) 38g. and subchapter X of chapter 440 [precedes
2 440.97] of the statutes; **relating to:** the regulation of home inspectors,
3 providing an exemption from emergency rule procedures, granting
4 rule-making authority and providing penalties.

Analysis by the Legislative Reference Bureau

This bill establishes requirements for the registration of home inspectors with the department of regulation and licensing (DORL). The bill does not require an individual to be registered as a home inspector in order to conduct home inspections for compensation, but the bill does restrict the use of the title "Wisconsin registered home inspector" to individuals who are registered as home inspectors by DORL. The bill also prohibits an individual who is not registered as a home inspector from using any other title or description which represents or may tend to represent the individual to be registered as a home inspector.

The bill requires an individual to pass an examination in order to qualify for registration as a Wisconsin registered home inspector and specifies other requirements for initial registration and for renewal of a certificate of registration. DORL may, by rule, establish continuing education requirements for Wisconsin registered home inspectors. In addition, the bill:

1. Allows a business entity to use, in connection with the name or signature of the business entity, Wisconsin "registered home inspectors" to describe its service if at least one business representative (for example, an officer, director or partner) of the business entity is a Wisconsin registered home inspector.

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1 (2) “Compensation” means direct or indirect payment, including the
2 expectation of payment whether or not actually received.

3 (3) “Dwelling unit” means a structure or that part of a structure that is used
4 or intended to be used as a home, residence or sleeping place by one person or by 2
5 or more persons who are maintaining a common household, to the exclusion of all
6 others.

7 (4) “Home inspection” means the inspection and analysis of the condition of the
8 improvements to residential real property, including the mechanical or structural
9 components of those improvements.

10 (5) “Home inspection report” means a written opinion of a home inspector
11 concerning all of the following:

12 (a) The condition of the improvements to residential real property that contains
13 not more than 4 dwelling units.

14 (b) The condition of the mechanical or structural components of the
15 improvements specified in par. (a).

16 (6) “Home inspector” means an individual who, for compensation, conducts a
17 home inspection.

18 (7) “Technically exhaustive” means the extensive use of measurements,
19 instruments, testing, calculations and other means to develop scientific or
20 engineering findings, conclusions or recommendations.

21 (8) “Wisconsin registered home inspector” means an individual who is
22 registered as a home inspector under this subchapter.

23 **440.971 Registry established.** The department shall establish a registry of
24 home inspectors.

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1 **440.9712 Use of title. (1)** No individual may use the title “Wisconsin
2 registered home inspector”, use any title or description that implies that he or she
3 is registered under this subchapter or represent himself or herself to be registered
4 under this subchapter unless the individual is registered under this subchapter.

5 **(2)** A business entity may use, in connection with the name or signature of the
6 business entity, the title “Wisconsin registered home inspectors” to describe the
7 business entity’s services, if one business representative of the business entity is
8 registered under this subchapter.

9 **440.972 Registration requirements. (1)** The department shall register an
10 individual under this subchapter if the individual does all of the following:

11 (a) Submits an application for registration to the department on a form
12 provided by the department.

13 (b) Pays the fee specified in s. 440.05 (1).

14 (c) Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory
15 to the department that he or she does not have an arrest or conviction record.

16 (d) Passes an examination under s. 440.973 (1).

17 **(2)** The renewal date and renewal fee for certificates granted under this section
18 are specified under s. 440.08 (2) (a) 38g.

19 **440.973 Examinations. (1)** No person may be registered under this
20 subchapter unless he or she passes an examination approved by the department.

21 **(2)** The department shall conduct examinations for home inspector
22 registration at least semiannually at times and places determined by the
23 department.

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1 **(3)** An individual is not eligible for examination unless the individual has
2 satisfied the requirements for registration under s. 440.972 (1) (a) to (c) at least 30
3 days before the date of the examination.

4 **440.974 Rules. (1)** The department shall promulgate rules necessary to
5 administer this subchapter, including rules to establish all of the following:

6 (a) Standards for acceptable examination performance by an applicant for
7 registration.

8 (b) Subject to s. 440.975, standards for the practice of home inspection by
9 Wisconsin registered home inspectors.

10 (c) Subject to s. 440.975, the information that a Wisconsin registered home
11 inspector is required to provide to a client concerning the results of the home
12 inspection conducted by the Wisconsin registered home inspector.

13 **(2)** The department may promulgate rules establishing continuing education
14 requirements for individuals registered under this subchapter. The rules
15 promulgated under this subsection may require continuing education either if it is
16 necessary to preserve the public health, safety or welfare or as a part of the
17 disciplinary process to ensure competency.

18 **440.975 Standards of practice. (1)** In this section, “reasonably competent
19 and diligent inspection” means an inspection that complies with the standards
20 established under this subchapter or the rules promulgated under this subchapter.

21 **(2)** A Wisconsin registered home inspector shall perform a reasonably
22 competent and diligent inspection to detect observable conditions of an improvement
23 to residential real property that he or she is inspecting. A reasonably competent and
24 diligent inspection is not required to be technically exhaustive.

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1 **(3)** After completing a home inspection, a Wisconsin registered home inspector
2 shall submit a written report to a client that does all of the following:

3 (a) Lists the components of an improvement to residential real property that
4 the home inspector is required to inspect under the rules promulgated under s.
5 440.964 (1) (b).

6 (b) Lists the components of an improvement to residential real property that
7 the Wisconsin registered home inspector has inspected.

8 (c) Describes any condition of an improvement to residential real property or
9 of any component of an improvement to residential real property that is detected by
10 the Wisconsin registered home inspector during his or her home inspection and that,
11 if not repaired, will have a significant adverse effect on the life expectancy of the
12 improvement or the component of the improvement.

13 (d) Describes any condition of an improvement to residential real property or
14 of any component of an improvement to residential real property that is detected by
15 the Wisconsin registered home inspector during his or her home inspection and that
16 constitutes a significant health hazard to any occupant of the improvement
17 inspected.

18 **(4)** A Wisconsin registered home inspector is not required to report on any of
19 the following:

20 (a) The life expectancy of an improvement to residential real property or a
21 component of an improvement to residential real property.

22 (b) The cause of the need for any major repair to an improvement to residential
23 real property or a component of an improvement to residential real property.

24 (c) The method of making any repair or correction, the materials needed for any
25 repair or correction or the cost of any repair or correction.

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1 (d) The suitability for any specialized use of an improvement to residential real
2 property.

3 (e) Whether an improvement to residential real property or a component of an
4 improvement to residential real property complies with applicable regulatory
5 requirements.

6 (f) The condition of any component of an improvement to residential real
7 property that the Wisconsin registered home inspector was not required to inspect
8 under the rules promulgated under s. 440.974 (1) (b).

9 **(5)** A Wisconsin registered home inspector may not report, either in writing or
10 verbally, on any of the following:

11 (a) The market value or marketability of a property.

12 (b) Whether a property should or should not be purchased.

13 **(6)** This section does not require a Wisconsin registered home inspector to do
14 any of the following:

15 (a) Offer a warranty or guarantee of any kind.

16 (b) Calculate the strength, adequacy or efficiency of any component of an
17 improvement to residential real property.

18 (c) Enter any area or perform any procedure that may damage an improvement
19 to residential real property or a component of an improvement to residential real
20 property, or enter any area or perform any procedure that may be dangerous to the
21 Wisconsin registered home inspector or to other persons.

22 (d) Operate any component of an improvement to residential real property that
23 is inoperable.

24 (e) Operate any component of an improvement to residential real property that
25 does not respond to normal operating controls.

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1 (f) Disturb insulation or move personal items, furniture, equipment,
2 vegetation, soil, snow, ice or debris that obstructs access to or visibility of an
3 improvement to residential real property or a component of an improvement to
4 residential real property.

5 (g) Determine the effectiveness of a component of an improvement to
6 residential real property that was installed to control or remove suspected hazardous
7 substances.

8 (h) Predict future conditions, including the failure of a component of an
9 improvement to residential real property.

10 (i) Project or estimate the operating costs of a component of an improvement
11 to residential real property.

12 (j) Evaluate acoustic characteristics of a component of an improvement to
13 residential real property.

14 (k) Inspect for the presence or absence of pests, including rodents, insects and
15 wood-damaging organisms.

16 (L) Inspect cosmetic items, underground items or items not permanently
17 installed.

18 **(7)** A Wisconsin registered home inspector may not do any of the following:

19 (a) Perform or offer to perform any act or service contrary to law.

20 (b) Deliver a home inspection report to any person other than the client without
21 the client's consent.

22 (c) Provide home inspection services to a client when the Wisconsin registered
23 home inspector has a conflict of interest that may adversely affect the client's
24 interests, unless the Wisconsin registered home inspector has the prior written
25 consent of the client.

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1 **(8)** This section does not prohibit a Wisconsin registered home inspector from
2 doing any of the following:

3 (a) Reporting observations or conditions in addition to those required under
4 this section or the rules promulgated under this section.

5 (b) Excluding a component of an improvement to residential real property from
6 the inspection, if requested to do so by his or her client.

7 (c) Engaging in an activity that requires an occupation credential if he or she
8 holds the necessary credential.

9 **440.976 Disclaimers or limitation of liability.** No Wisconsin registered
10 home inspector may include, as a term or condition in an agreement to conduct a
11 home inspection, any provision that disclaims the liability, or limits the amount of
12 damages for liability, of the Wisconsin registered home inspector for his or her
13 negligence or intentional wrongdoing.

14 **440.977 Liability of Wisconsin registered home inspectors. (1)**
15 Notwithstanding s. 893.54, an action to recover damages for any act or omission of
16 a Wisconsin registered home inspector relating to a home inspection that he or she
17 conducts shall be commenced within 2 years after the cause of action accrues or be
18 barred.

19 **(2)** A Wisconsin registered home inspector is not liable to a person for damages
20 that arise from an act or omission relating to a home inspection that he or she
21 conducts if that person is not a party to the transaction for which the home inspection
22 is conducted.

23 **440.978 Discipline; prohibited acts. (1)** Subject to the rules promulgated
24 under s. 440.03 (1), the department may make investigations or conduct hearings to

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1 determine whether a violation of this subchapter or any rule promulgated under this
2 subchapter has occurred.

3 (2) Subject to the rules promulgated under s. 440.03 (1), the department may
4 reprimand a Wisconsin registered home inspector or deny, limit, suspend or revoke
5 a certificate under this subchapter if the department finds that the applicant or
6 Wisconsin registered home inspector has done any of the following:

7 (a) Made a material misstatement in an application for a certificate or renewal
8 of a certificate.

9 (b) Engaged in conduct while practicing as a Wisconsin registered home
10 inspector that evidences a lack of knowledge or ability to apply professional
11 principles or skills.

12 (c) Subject to ss. 111.321, 111.322 and 111.335, been arrested or convicted of an
13 offense committed while registered under this subchapter.

14 (d) Advertised in a manner that is false, deceptive or misleading.

15 (e) Advertised, practiced or attempted to practice as a Wisconsin registered
16 home inspector under another person's name.

17 (f) Allowed his or her name to be used by another person while the other person
18 was practicing or attempting to practice as a Wisconsin registered home inspector.

19 (g) Subject to ss. 111.321, 111.322 and 111.34, practiced as a Wisconsin
20 registered home inspector while the individual's ability to practice was impaired by
21 alcohol or other drugs.

22 (h) Acted as a Wisconsin registered home inspector in connection with a
23 transaction in which he or she was also a principal, appraiser or broker without full
24 disclosure to and the written consent of all parties to the transaction.

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1 (i) Performed, or agreed to perform, for compensation any repairs, maintenance
2 or improvements on any property less than 2 years after he or she conducts a home
3 inspection, without the written consent of the property owner given before the home
4 inspection occurred.

5 (j) Prevented or attempted to prevent a client from providing a copy of, or any
6 information from, a home inspection report done by the Wisconsin registered home
7 inspector in connection with a transaction to any interested party to the transaction.

8 (k) Failed to provide a home inspection report to a client by the date agreed on
9 by the Wisconsin registered home inspector and the client or, if no date was agreed
10 on, within a reasonable time after completing the inspection.

11 (L) Paid in full or in part, for a home inspection, a fee, a commission, or
12 compensation as a referral or finder's fee, to any person who is not a Wisconsin
13 registered home inspector.

14 (m) Violated this subchapter or any rule promulgated under this subchapter.

15 **(3)** In addition to or in lieu of proceeding under sub. (2), the department may
16 assess against a person who has engaged in any of the practices specified in sub. (2)
17 a forfeiture of not more than \$1,000 for each separate offense.

18 **(4)** In lieu of proceeding under sub. (1) or (2), the department may place, in a
19 registry information file, a copy of a complaint received by the department against
20 a Wisconsin registered home inspector, the inspector's response to the complaint and
21 a copy of any records of the department concerning the complaint. If the department
22 establishes a registry information file under this subsection, the department shall
23 use the following procedure:

24 (a) No later than 60 days after the date on which the department receives a
25 complaint alleging that a Wisconsin registered home inspector has engaged in

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1 conduct that is grounds for discipline under sub. (2), the department shall provide
2 the inspector with a copy of the complaint and place a copy of the complaint and a
3 copy of any records of the department concerning the complaint in the registry
4 information file.

5 (b) After receiving a copy of the complaint under par. (a), the Wisconsin
6 registered home inspector who is the subject of the complaint, or his or her
7 authorized representative, may place in the registry information file a statement of
8 reasonable length describing the inspector's view of the correctness or relevance of
9 any of the information contained in the complaint.

10 (c) The department shall make the complaint, the Wisconsin registered home
11 inspector's response to the complaint, if any, and a copy of any records of the
12 department concerning the complaint placed in a registry information file under this
13 subsection available to the public.

14 (d) The department shall remove all complaints against and other information
15 concerning a Wisconsin registered home inspector from the registry information file
16 if, for a period of 2 years from the date of the most recent complaint filed in the
17 registry information file, no further complaints have been filed against the inspector.

18 (5) The department may, as a condition of removing a limitation on a certificate
19 issued under this subchapter or of reinstating a certificate that has been suspended
20 or revoked under this subchapter, do any of the following:

21 (a) Require the Wisconsin registered home inspector to obtain insurance
22 against loss, expense and liability resulting from errors and omissions or neglect in
23 the performance of services as a home inspector.

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1 (b) Require the Wisconsin registered home inspector to file with the
2 department a bond that is furnished by a company authorized to do business in this
3 state and is in an amount approved by the department.

4 **440.999 Sunset provision; review of sunset provision.** (1) This
5 subchapter does not apply after June 30, 2003.

6 (2) The department shall promulgate rules establishing a procedure for the
7 department to review whether the continued registration of home inspectors after
8 June 30, 2003, will serve the interests of the public and the home inspection
9 profession. No later than June 30, 2000, the department shall conduct the review
10 under this subsection. The department may propose legislation to repeal or extend
11 the date specified in sub. (1).

12 **SECTION 3. Nonstatutory provisions.**

13 (1) Before the first day of the 7th month beginning after the effective date of
14 this subsection, the department of regulation and licensing may promulgate rules
15 under section 440.974 of the statutes, as created by this act, as emergency rules
16 under section 227.24 of the statutes for the period before permanent rules take effect,
17 but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the
18 statutes, if the department of regulation and licensing determines that the use of the
19 procedure under section 227.24 of the statutes is necessary or is in the best interests
20 of the public. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the
21 department of regulation and licensing is not required to make a finding of
22 emergency.

23 (2) The secretary of regulation and licensing shall establish a committee under
24 section 15.04 (1) (c) of the statutes to advise the department of regulation and
25 licensing in promulgating rules under section 440.974 (1) of the statutes, as created

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1 by this act, an the emergency rules under subsection (1). The committee shall consist
2 of 5 home inspectors and 3 public members. The secretary of regulation and
3 licensing, or a person designated by the secretary, shall serve as the nonvoting
4 chairperson of the committee.

5 **SECTION 4. Effective dates.** This act takes effect on the first day of the 7th
6 month beginning after publication, except as follows:

7 (1) SECTION 3 of this act takes effect on the day after publication.

8 (END)